

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction**

Appeal No. 74 of 2007 & IA Nos. 94 & 95 of 2007

Dated : 09th May, '08

**Coram: Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

In the matter of :

Ajmer Vidyut Vitran Nigam Ltd. ... Appellant
Versus
Rajasthan Electy. Regulatory Commission & Ors. ... Respondents

ORDER OF REFERENCE
UNDER SECTION 123 OF ELECTRICITY ACT 2003

We have today (i.e. 08th May, '08) delivered two judgments on this appeal. The judgment written by one of us, Shri A. A. Khan, concludes that the appeal has to be allowed subject to Limitation Act of 1963 setting aside the impugned order and the principle of estoppel is not applicable in the case. He also holds that the principle of conduct of parties to the contract deciding the future operation is not applicable in the instant case. The other Member namely Mrs. Justice Manju Goel has concluded that the appeal be dismissed and that during the continuance of the wheeling and banking agreements and the HT agreement, unless the same are

expressly modified by the parties, the appellant will be billed by respondent No.2 in the method applied before November 2005.

The points of divergence can be culled out as under:

- (a) Whether the billing pattern for the energy consumption of RSMML, the respondent No.2, should be the one that was being followed before November, 2005 or whether the billing pattern should be the one which was challenged before the Commission, respondent No.1.
- (b) Whether the principle of conduct of the parties to the contract deciding the future operation of the contract is applicable in the instant case.
- (c) Whether the principle of estoppel has any application in the facts of the case.
- (d) Whether a remand order is required to be passed directing the Commission to consider the respondent's prayer for waiving the minimum charges.

These points are being referred to the Hon'ble Chairperson of this Tribunal for further action under section 123 of the Electricity Act, 2003.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr.A. A. Khan)
Technical Member